

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In Re:

Case No. 04-33449

Chapter 7 Case

Dennis P. O'Connell, Jr. and Julie C. Engle,

Debtor(s).

**NOTICE OF HEARING AND MOTION  
ON OBJECTION TO CLAIMED  
EXEMPT PROPERTY**

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To: The debtor(s) and other entities specified in Local Rule 1204(a).

1. Michael J. Iannacone moves the court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 2:00 p.m. on September 22, 2004, in Courtroom 228A, United States Court House, at 316 North Robert Street, in St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered not later than September 15, 2004, which is three (7) days before the time set for the hearing (including Saturdays, Sundays, and holidays), or filed and served by mail not later than September 12, 2004, which is seven (10) days before the time set for the hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on June 10, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §522 and Bankruptcy Rule 4003. This motion is filed under Bankruptcy Rule 9014 and Local Rules 4003-1, 9006-1 and 9013-1 to 9013-3. Trustee requests the Court to determine the property of the debtor as set forth herein is not exempt.

6. Trustee objects to the following property being claimed exempt:

Real property located at 649 Old Highway 8 NW, New Brighton, MN 55112, County of Ramsey, valued by the debtors at \$385,000.00 and stock in Trend Killer, Inc. valued by the debtors at \$10,000.00.

7. The basis for the objection is as follows:

Upon information and belief, both property interests described above in Paragraph 6 are owned solely by the husband and cannot be claimed exempt by the spouse. The debtors claimed the real property exempt in the amount of \$9,625.00 and the stock in Trend Killer, Inc. exempt in the amount of \$6,000.00. These two items together with other items claimed exempt under 11 U.S.C. 522 d(5) total \$16,885.00, which exceeds the allowable amount to be claimed under d(5) by \$6,660.00. The amount allocated to Debtor Dennis P. O'Connell is checking account in the amount of \$10.00, ½ of the security deposit in the amount of \$625.00 plus \$9,625.00 for the real property and the interest in Trend Killer in the amount of \$6,000.00, totally \$16,260.00, which exceeds his allowable d(5) exemption.

8. If the court determines an evidentiary hearing is required, be advised that the court may treat the hearing scheduled above as a scheduling conference and schedule an evidentiary hearing for a subsequent date.
9. That in the event testimony is necessary, Trustee may testify individually as well as call the debtor(s) for cross examination pursuant to Federal Rules of Civil Procedure.

**WHEREFORE**, Michael J. Iannacone moves the court for an order that disallows any amount over the maximum allowed under d(5), which is \$10,225.00, direct the debtor to amend Schedule C to exempt no more than \$10,225.00 allocated between the four assets described in Paragraph 7 and cooperate with the debtors' liquidation of the asset not completely claimed exempt by the debtors and such other relief as may be just and equitable.

Dated: August 11, 2004

\_\_\_\_/e/ Michael J. Iannacone\_\_\_\_  
Michael J. Iannacone, #48719  
Attorney for the Trustee  
8687 Eagle Point Blvd.  
Lake Elmo, MN 55042  
(651) 224-3361

Verification. I, Michael J. Iannacone, the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on August 11, 2004

\_\_\_/e/ Michael J. Iannacone \_\_\_

UNITED STATES BANKRUPTCY COURT  
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**UNSWORN CERTIFICATE  
OF SERVICE**

Debtor(s).

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I, Krisann Treague, employed by Michael J. Iannacone, attorney licensed to practice law in this Court, with office address of 8687 Eagle Point Blvd., Lake Elmo, Minnesota, declare that on August 11, 2004, I mailed copies of the **NOTICE OF HEARING AND MOTION ON OBJECTION TO CLAIMED EXEMPT PROPERTY WITH PROPOSED ORDER** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

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United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Mpls., MN 55415

Dennis P. O'Connell, Jr.  
649 Old Highway 8 #233  
New Brighton, MN 55112

Julie C. Engle  
649 Old Highway 8 #233  
New Brighton, MN 55112

Larry Laroue, Esq.  
312 Central Ave. #478  
Minneapolis, MN 55414  
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And, I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on: August 11, 2004

\_\_\_\_/e/ Krisann Treague \_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In Re:

Bankruptcy 04-33449

Chapter 7 Case

Dennis P. O'Connell, Jr. and Julie C. Engle,

**O R D E R**

Debtor(s).

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At St. Paul, Minnesota.

The above entitled matter came duly on for hearing before the undersigned Judge of Bankruptcy Court upon the objection of the trustee to certain property claimed exempt by the debtor(s). Michael J. Iannacone, Esq., appeared on behalf of the bankruptcy estate of the debtor(s) above named and other appearances are as noted in the record. Upon all the files, records and proceedings herein and the Court being duly advised in the premises,

**IT IS HEREBY ORDERED** as follows:

1. That the objection of the trustee to the claim of exemption to the following described property:

Real property located at 649 Old Highway 8 NW, New Brighton, MN 55112, County of Ramsey, valued by the debtors at \$385,000.00 and stock in Trend Killer, Inc. valued by the debtors at \$10,000.00.

is hereby **SUSTAINED**.

2. The debtor(s) are hereby ordered to forthwith surrender said asset to the trustee and to cooperate in all respects with the trustee's collection and liquidation of same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Dennis D. O'Brien, Judge  
United States Bankruptcy Court